

# **Office of the Inspector General**

Miami-Dade County

# **FINAL REPORT**

## **Miami-Dade Seaport Department**

## **Seaport Identification Card Appeal Process**

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A review conducted by the Office of the Inspector General of the Miami-Dade Seaport Department's Appeal Procedure, in accordance with Chapter 28A of the Code of Miami-Dade County and Administrative Order 4-109, for Applicants Denied a Seaport Identification Card.

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September 25, 2002

**Office of the Inspector General**  
**Miami-Dade Seaport Department**  
**Seaport Identification Card Appeal Process**

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## **I. INTRODUCTION & SUMMARY**

At the request of the Director of the Miami-Dade County Seaport Department, the Office of the Inspector General (OIG) conducted a review of the appeals procedures for applicants denied a Seaport identification card.

In summary, the OIG's review found:

- Of all denied applicants who requested an appeal and attended their appeal hearing, there was a 80% reversal rate – identification card issued. Of denied female applicants who requested an appeal and attended their appeal hearing, there was a 100% reversal rate. Of denied male applicants who requested an appeal and attended their appeal hearing, there was a 79% reversal rate.
- Data in the Seaport Identification Unit's badging system does not capture "H" / Hispanic as a racial and/or ethnic group identity.
- A comparison between data from the badging system and data extracted from the applicant's own application request form shows 40 instances of miscoding (a 17% misclassification rate of all appellants appearing before the Appeals Committee), indicating that data extracted from the current system is unreliable and should not be used for statistical purposes.
- A comparison between members of the International Longshoremen's Association (ILA) Local 1416 and non-affiliated truck drivers as the two largest groups of appellants shows that ILA 1416 appellants have a 85% success rate on appeal versus a 67% success rate among truck driver appellants.
- Certain agencies designated to serve on the Appeals Committee consistently fail to participate and render their vote on appeals cases, raising concerns about the procedural and substantive fairness of the process as it pertains to all interested parties, in particular appellants and the Seaport Department.
- It is apparent that that there is some confusion between the State of Florida requirements, F.S. §311.12, versus the Chapter 28A of the Code of Miami-Dade County as voiced by Committee members at the hearing. On the three occasions observed by the OIG, no personnel qualified to render legal interpretation, i.e. an Assistant County Attorney, was present and available to answer questions of the Committee members.

## **II. BACKGROUND**

On June 2, 1998, the Board of County Commissioners (BCC) approved Ordinance No. 98-78, amending sections of Chapter 28A of the Code of Miami-Dade County. The Ordinance revised the Code as it relates to the issuance of permanent Seaport identification cards for individuals working on the Port of Miami. These guidelines apply to both Miami-Dade County employees, as well as individuals privately employed whose work is at the Port of Miami.

Ordinance No. 98-78 allows for the denial of Seaport identification cards for new applicants who have been convicted of a felony within the last ten (10) years. Ordinance 98-78 also established guidelines for the denial of Seaport identification cards for “Grandfathered Applicants,” defined to include “any person employed at the Seaport as of the effective date of this ordinance or who, prior to the effective date of this ordinance, was employed at the Seaport.” The guidelines for Grandfathered Applicants are discussed in further detail in Section IV.(C.)

On June 16, 1998, the Board of County Commissioners approved resolution R-717-98, which established Administrative Order 4-109. Administrative Order 4-109 establishes departmental procedures for appeals associated with a denial of a Seaport identification card.

## **III. SCOPE OF REVIEW**

The Office of the Inspector General (OIG) initiated a review of the Seaport identification card appeal procedures to determine if the process is functioning in a fair and equitable manner. The OIG reexamined the application and files of individuals who were denied a Seaport identification card either as a new applicant or as a renewal applicant. In all, the applications of 275 individuals who had been denied Seaport identification cards were reviewed. The OIG’s review assessed whether any patterns of appeal decisions, whether the denial was reversed or sustained, emerged from the available data. The OIG also reviewed this data by applicant gender, race/ethnicity and employer/employment classifications. The OIG also reviewed the voting attendance of Appeals Committee members to assess how their absences affected the process.

Our review spanned a 40-month period from the inception of the Appeals hearings in September 1998 through December 2001. This review was limited to the appeals process and only to those cases where an individual was initially denied a Seaport identification card. General revocations of Seaport identification cards were excluded from this study, but they were included if the individual filed a written request for an appeal.

## **IV. PROCEDURE FOR ISSUANCE OF SEAPORT IDENTIFICATION CARD**

### **A. THE APPLICATION PROCEDURE**

Application for a Seaport identification card is made at the Port of Miami Seaport Identification Unit. While located on site at the Port of Miami, the Unit is under the jurisdiction and supervision of the Miami-Dade Police Department (MDPD). The Unit is staffed by MDPD personnel.

Applicants for a Seaport identification card must complete an identification card request form. (Exhibit A). The request form requires the applicant to state if he/she has ever been convicted of a felony or had a finding of guilt ordered against him/her. The applicant's local criminal history is then checked against MDPD's database. If the local criminal history check shows that the applicant has not been convicted of a felony or has not had a finding of guilt ordered against him/her within the last ten (10) years, the applicant is then approved and is issued a Seaport identification card.

If the applicant's local criminal history check reveals that the applicant has been convicted of a felony or has had a finding of guilt ordered against him/her within the last ten (10) years, the application is denied, but the individual may be eligible to receive a temporary identification card. [See Section IV.(D.)]

All applicants for a Seaport identification card are fingerprinted except those in law enforcement or employees whose fingerprints are already on file. All fingerprints are sent to the Florida Department of Law Enforcement (FDLE) to be checked in both a state and national database. Usually FDLE responds back to the Seaport identification unit within a week, and if the fingerprints identify that the individual has been convicted of a felony within the last ten years, then that individual's Seaport identification card is suspended and access to the Seaport is revoked. The individual is then sent a certified letter notifying him/her that their identification card is no longer valid, and that they must file a written appeal.

While the above-described process is a general example of how an application is processed, positive criminal history checks (indicating a felony conviction) are otherwise regulated by adherence to state and county requirements.

### **B. REQUIREMENTS OF FLORIDA STATUTE § 311.12 (2001)**

Florida Statute (F.S.) § 311.12 (2001) establishes minimum state standards for seaport security. In addition to requiring each State of Florida seaport to establish a security plan, which must be reviewed and approved by the Office of Drug Control and the [Florida] Department of Law Enforcement (see F.S. § 311.12(2)), the statute also sets

forth criminal history standards that must be in place by January 1, 2002 for restricted area access at each seaport.

According to F.S. § 311.12 (3)(b): “By January 1, 2002, each Seaport security plan shall identify criminal convictions or other criminal history factors consistent with paragraph (c) which shall disqualify a person from either initial Seaport employment or new authorization for regular access to Seaport property or to a restricted access area. Such factors shall be used to disqualify all applicants for employment or others seeking regular access to the seaport or restricted areas on or after January 1, 2002, and may be used to disqualify all those employed or authorized for regular access on that date. **Each seaport security plan may establish a procedure to appeal a denial of employment or access based upon criminal history factors established pursuant to this paragraph. The appeal procedure may allow the granting of waivers or conditional employment or access. In addition, a seaport may allow waivers on a temporary basis to meet special or emergency needs of the seaport or its users. Policies, procedures, and criteria for implementation of this subsection shall be included in the seaport security plan.**” (Emphasis added).

F.S. § 311.12 (3)(c)(1) and (2) sets forth the minimum threshold of an applicant’s criminal history which would deny employment or access established by each seaport pursuant to its seaport security plan. Subsection (1) lists numerous criminal offenses,<sup>1</sup> if convicted, regardless of whether adjudication was withheld, within the past five (5) years, which would disqualify an individual for initial employment within or regular access to a seaport or restricted access area. Subsection (2) states: “Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to a Seaport or restricted access area unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 5 years prior to the employment or access date under consideration.” [See Exhibit B for a complete copy of F.S. § 311.12]

### **C. REQUIREMENTS OF § 28A-5.3 OF THE CODE OF MIAMI-DADE COUNTY**

Section 28A-5.3 of the Code of Miami-Dade County establishes the application procedures and criteria for issuance of a Seaport identification card. In general, “No applicant for a Seaport identification card who, within the last ten (10) years, (i) has had a felony conviction or (ii) against who a finding of guilty has been entered on a felony charge, shall be issued an identification card, except in the case of a Grandfathered Applicant.” (§28A-5.3(f) Code of Miami-Dade County) Subsection (f) does not list specific felony offenses that trigger its application and does not address periods of incarceration, probation or other type of supervision. On its face, subsection (f) is

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<sup>1</sup> See Exhibit B for the listing of enumerated offenses.

triggered if the person was convicted or had a finding of guilt on any felony offense within the past 10 years of his/her application. Subsection (f) applies to new applicants and applicants seeking renewal, who were not previously grandfathered by the passage of the ordinance in June 1998.

Grandfathered applicants are governed by §28A-5.3(g) of the Code. First, a grandfathered applicant is one who was “employed at the Seaport as of the effective date of this ordinance [June 1998] or who, prior to the effective date of this ordinance, was employed at the Seaport.” However, if a grandfathered applicant is found to have been convicted of a felony or had a finding of guilt entered against him/her on a felony offense after June 1998, then that grandfathered person is treated no differently than an applicant in subsection (f). In other words, that person should be denied an identification card because of the subsequent [post June 1998] felony conviction or entry of guilt. However, by operation of A.O. 4-109, the grandfathered applicant is treated differently. Unlike a brand new applicant, this grandfathered applicant may be granted a temporary identification card pending an appeal, whereas the new applicant, having not previously worked at the Port, should not be issued a temporary identification card pending appeal.

For grandfathered applicants that were subject to the new requirements with the Ordinance’s passage in June 1998, a two-tiered approach was utilized to determine their eligibility for a seaport identification card. If it was determined that a grandfathered applicant had been convicted of a felony or had a finding of guilt rendered against him/her within the last ten (10) years, the first step would be to exclude any felony conviction (or finding of guilt on a felony offense) which occurred prior to June 1993. Second, all felony convictions within five (5) years, except for the following, may also be excluded.

1. Cargo Theft
2. Smuggling
3. The possession with intent to sell or distribute, sale, or trafficking of narcotics or any other controlled substance;
4. Dishonesty, fraud, or misrepresentation;
5. Felony theft under Chapter 812, Florida Statutes, or its Federal Counterpart; or
6. Any violent crime committed with a weapon.

For example, according to subsection (g), a grandfathered applicant seeking renewal of his/her identification card pursuant to these new requirements in 1998, and who was convicted of cargo theft in 1995, would be denied an identification card, however may still be eligible for a temporary card pending appeal. Under these same facts, but with the conviction occurring in 1991, this grandfathered individual would qualify. Moreover, if the conviction were for carrying a concealed firearm in 1996, the person would not be disqualified because even though it is within five (5) years it is not one of the enumerated offenses.

#### **D. REQUIREMENTS OF ADMINISTRATIVE ORDER 4-109**

Administrative Order (A.O.) 4-109 (Exhibit C) establishes departmental administrative procedures for appeals associated with a denial of a Seaport identification card. It also establishes the criteria for issuance of a temporary<sup>2</sup> identification card pending appeal. A.O. 4-109 states that “all applicants receiving a denial letter, with the exception of those with an outstanding warrant and those who have not previously worked at the Port, shall be issued a temporary identification card for a period not to exceed 90 days pending their appeal.” The OIG found numerous instances where new applicants, who have been convicted of a felony offense and who had not previously worked on the Port, were issued temporary identification cards in violation of A.O. 4-109.

The OIG questions whether the Seaport Identification Card Unit fully understands Chapter 28A and A.O. 4-109 as it applies to the denial of a Seaport identification card. A.O. 4-109 establishes bright line criteria for the issuance of a temporary identification card. If the criminal history check in the MDPD database shows that there is a warrant for that person’s arrest, it is obvious that the person would not receive an identification card as the person should be arrested. If the criminal history check reveals a felony conviction within the past 10 years and if that person had not previously worked at the Port, i.e. a new applicant, then that new applicant is not entitled to a temporary Seaport identification card pending his/her appeal. Conversely, applicants seeking renewal, including grandfathered applicants,<sup>3</sup> may be entitled to a temporary identification card – to keep working at the Port of Miami – pending their appeal.

#### **E. RECONCILING F.S. 311.12 WITH MIAMI-DADE CODE §28A-5.3**

After a thorough review of the statutory authorities, the OIG believes that, under certain situations, applications for a Seaport identification card may not meet State minimum guidelines, yet may pass County Code requirements. Given that the Florida Statute was last amended in 2001 and contains minimum security standards, which became effective January 1, 2002, the Seaport should consider consulting with the County Attorney’s Office to reconcile the conflicts. Moreover, because the Miami-Dade County Code does not address the issue of incarceration and other types of supervision, the two authorities may conflict on this issue.

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<sup>2</sup> The term temporary, as used in the Code and the A.O. is confusing. Within §28A-5 of the Code, “temporary” refers to temporary identification cards issued to non-port temporary employees which require no more than five (5) days access to port property. Temporary identification cards for an applicant pending appeal are not discussed in the Code. A.O. 4-109 establishes that a temporary identification cards is not to exceed 90 days pending the appeal.

<sup>3</sup> Not all applicants seeking renewal are grandfathered applicants. Renewal applicants who first received their identification cards after the effective date of the ordinance but who are seeking annual renewal are subject to the Code’s 10-year felony conviction prohibition, just like any other new applicant.

The following example illustrates this conflict. For a new applicant seeking a Seaport identification card, who has never worked on the Port of Miami, it is conceivable that a person may meet the 10 year requirement set by Miami-Dade County, but not the five (5) year after release of supervision requirement set by F.S. § 311.12(3)(c)(2). For example, if John Doe were convicted of felony cargo theft in 1990, served five (5) years in prison followed by (five) years probation, he, technically would be eligible, under the County Code, for a Port of Miami identification card. The conviction occurred over ten (10) years ago, and the County Code does not address any type of post-conviction supervision. However, under State requirements, John Doe would not be eligible because the period of time since his release from supervision is less than the five (5) years required by the statute.

Regarding grandfathered applicants, most if not all conflicts will likely become moot by June 2003. At that time, it is highly unlikely for a grandfathered applicant to apply for a Seaport identification card who has not been through the application process since passage of the Ordinance in June 1998. Second, because the grandfather clause is couched in terms of length of time elapsed relative to the effective date of the ordinance [June 1998] and not the length of time between the date of conviction to the date of application, the grandfather time frames should render themselves moot after five years have passed.

## **V. OVERVIEW OF THE APPEALS PROCESS**

### **A. PROCEDURES FOR APPEAL**

All denied applicants, whether or not they have been issued a temporary identification card, are notified in writing by certified mail that his/her application for a Seaport identification card has been denied. (Exhibit D) All denial letters are signed by the Seaport Director and contain the reason for the denial and include a copy of Chapter 28A of the Code of Miami-Dade County. If the denied applicant desires to appeal the denial, the applicant must submit a written request to the Seaport Director within fourteen (14) consecutive days of receipt of the written denial notification. Failure to file a written appeals request within fourteen (14) days results in the forfeiture of all future appeal rights.

Applicants who request an appeal are scheduled to appear before the Appeals Committee. The Appeals Committee meets once a month, on the third Thursday of each month. Depending upon when the applicant's written request is received, he/she will be scheduled to appear before the Appeals Committee within 60 days. Applicants are notified via certified mail of the hearing date, time and location of the hearing.

If an applicant fails to appear before the Appeals Committee, he/she forfeits the right to appeal. If the applicant appears before the Committee, there are three possible outcomes:

1. Approval. Applicant is issued a Seaport identification card.
2. Continued. Applicant must reappear before the board the following month. This is usually due to a voting tie among committee members or occasions where the appellant's documentation was not available to the committee members at the hearing.
3. Denial. Majority of committee members vote against issuing the applicant a Seaport identification card.

If an applicant's denial of a Seaport identification card is sustained by the Appeals Committee, he/she may request a second appeal before a hearing examiner.<sup>4</sup> The applicant is required to file this request with the County Manager within ten (10) days of the denial by the Appeals Committee. A hearing before a hearing examiner is scheduled, and the applicant is notified of the date and time via certified mail.

If the applicant fails to appear before the hearing examiner, he/she forfeits the right to a hearing examination. If the applicant appears before the hearing examiner, the examiner then decides the case, either in favor or against the applicant. The hearing examiner then "transmit[s] his findings of facts, conclusions, and any recommendations together with a transcript of all evidence taken before him and all exhibits received by him, to the Manager who may sustain, reverse or modify the action at issue." (Section 28A-7 of the Code of Miami-Dade County)

## **B. THE APPEALS COMMITTEE**

Section 28A-5.3(h) of the Code of Miami-Dade County governs the appointment and make-up of the five-member Appeals Committee.

1. A member of the Miami-Dade Police Chiefs' association, excluding the Director of the Miami-Dade Police Department, on a rotating basis, each member to serve for a period of one (1) year,
2. The Special Agent in Charge of the U.S. Customs Service in Miami or a designee,
3. A representative of the employee's employer or, at the employer's option, the association representing the employer,
4. The Port Director or his or her designee, and
5. A union, labor, or employee representative.

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<sup>4</sup> Code Section 28-7.1 was recently amended by Ordinance No. 01-180, adopted on November 6, 2001. It replaced the secondary review process from a hearing before the Board of County Commissioners to a formal hearing before a hearing examiner.

## C. APPEAL FILES

The OIG reviewed all appeal files starting with the inception of the appeals process in September 1998 through December 2001. The following data was extracted from the individual's original application: name, date of birth, gender, race or ethnic identity, and employer. Criminal charges, the date of conviction, and the disposition of case were extracted from the local criminal history check conducted MDPD. The Appeals Committee's decision for each applicant and the voting history of each committee member were also extracted from the voting sheet.

Each applicant's appeal file contains the following general information:

- The applicant's original application for a Seaport identification card;
- The local criminal history check conducted by MDPD, any supplemental information provided by FDLE pursuant to the fingerprint check, including arrest reports obtained from the appropriate police department;
- The applicant's original letter requesting an appeal;
- Copies of notification letters from the Seaport identification unit addressed to the applicant and;
- A voting sheet used by Appeals Committee members to cast their votes.

All appeal files are maintained under the control of the Miami-Dade Police Department, Seaport Identification Unit. Individual appeal files are grouped together, by month, into larger folders with each folder consisting of the appeals scheduled to be heard and are heard for that monthly meeting. It was observed that since the inception of the appeals process in September 1998, there has been a noted improvement in the filing system. However, there does not appear to be a uniform method of grouping together and/or tracking files during the course of the review process. For example, applicant files, where the denied applicant did not request an appeal, were grouped together with monthly appeal files heard by the Committee. In other cases, applicants who subsequently requested a second level of review (by the Board of County Commissioners (BCC) prior to November 2001) had their files removed and segregated from the monthly groupings, however, in other instances, cases heard by the BCC remained included in the monthly groupings.

## D. APPELLATE CRITERIA

While an application for a Seaport identification card will be denied based on the individual's criminal history where his/her felony conviction renders the applicant ineligible, both the State statute and County Code allow for an appeals process which would, in essence, grant that individual a waiver. The criteria for overturning a denial, however, is unclear, as the OIG was unable to find any established appellate criteria, other than three (3) suggested guidelines printed on the Appeals Committee voting sheet.

F.S. §311.12(3)(b) states: “Each seaport security plan may establish a procedure to appeal a denial of employment or access based upon criminal history factors established pursuant to this paragraph.” (Emphasis added).

Moreover, §28A-5.3(h) of the Code of Miami-Dade County states: “The appeals committee shall determine whether the employee shall be issued an identification card based on procedures issued by the County Manager in an administrative order.” (Emphasis added).

A.O. 4-109 is the only administrative order which addresses appeals of a Seaport identification card; and while it establishes procedures, e.g. how to request an appeal, filing deadlines, mailing of certified letters etc., it is silent as to what factors might be taken into consideration for overturning a denial. A.O. 4-109 does tell appellants that they have the right to present their case and bring relevant documents, but again it does not provide the appellant notice with what evidence is considered relevant or persuasive for their appeal.

The only document found by the OIG to address any sort of criteria is the actual voting ballot itself. (Exhibit E) It states: “Please consider the following when making your decision [vote]:

1. The nature of the offense committed.
2. The amount of time that has elapsed since the crime was committed.
3. The relevance of the crime as it relates to the Dante B. Fascell Port of Miami-Dade.”

This language would qualify as criteria in determining whether a denial should be reversed or sustained. The language, however, is located on the Appeals Committee ballot, and it is questionable whether or not appellants are notified of these guidelines prior to presenting their appeal. Moreover, given the inconsistency with which committee members attend appeals hearings, and the changing and substitution of committee members as designees/representatives, it would be beneficial to all involved, appellants and Appeals Committee members, that appellate criteria be set forth in the Administrative Order. It may also serve to benefit the hearing examiner should the appeal be taken to a secondary level of review, which would give the hearing examiner a better idea of the factors that were taken into consideration at the first appeal hearing.

## **VI. OVERVIEW OF ALL APPEALS DATA**

### **A. BRIEF ANALYSIS OF ALL APPEALS CASES**

A review of the identification card process revealed that a total of 336 individuals were initially denied Seaport identification cards between September 1998 and December 2001.<sup>5</sup> During that same time-period, 30,131<sup>6</sup> individuals were issued Seaport identification cards.<sup>7</sup> Of the 30,131 Seaport identification cards issued, 189 included approved appeals cases.

Further analysis reveals that of the 336 individuals initially denied Seaport identification cards, 275 individuals actually filed a written request for an appeal. 61 individuals did not request an appeal.

As previously explained, all individuals who are initially denied a Seaport identification card are notified via certified U.S. mail. A review of the files for those individuals who did not request an appeal reveals that 31% (19 of the 61 individuals) did not receive their official notification letters. The certified letters are mailed to the “current address,” as written by the individual on his/her application. It is possible that some of these 19 individuals were not duly notified of the appeals process. While reviewing the application files, the OIG observed that many of these individuals did not retrieve the certified letters held at their local post office. After three notifications, the post office returns the certified letter to the sender. Certified letters returned to the Seaport Identification Unit are placed in the applicant’s file.

The OIG reviewed all 275 appeals filed by individuals from September 1998 through December 2001. 189 of the appeals heard by the Committee resulted in a reversal of the initial denial, thereby granting the applicant a Seaport identification card. 48 of the appeal cases resulted in the initial denial being sustained. In 38 occasions, the applicant, after requesting an appeal, failed to appear before the Appeals Committee thereby forfeiting their right to further review of his/her application.

Total Number of Appeals Approved by Committee	Percentage of Total Appeals (out of 275)	Total Number of Appeals Denied by Committee	Percentage of Total Appeals (out of 275)	Total Number of No Show Appeal Applicants	Percentage of Total Appeals (out of 275)
189	68.73%	48	17.45%	38	13.81%

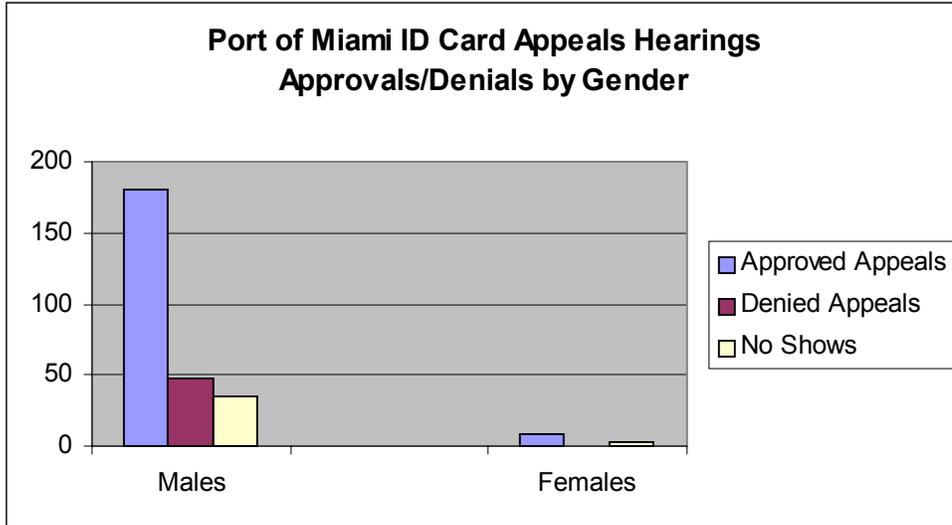
<sup>5</sup> This group of 336 individuals includes those individuals who did not qualify for the identification card, however were issued a temporary identification card with the opportunity to appeal the initial denial.

<sup>6</sup> This number includes both new applicants and yearly renewals of a Seaport identification card.

<sup>7</sup> Data provided by Miami-Dade County Police Department, Seaport Identification Unit.

## B. OVERVIEW OF MALE / FEMALE APPELLANTS

Of the 275 applicants who requested an appeal, there were 12 female and 263 male appellants. Results of the appeals, as analyzed by gender, appear below.



Of the twelve (12) females who requested an appeal, nine (9) actually attended their appeal hearing. Three (3) females failed to attend their hearing, thereby forfeiting their appeal rights. All nine (9) females, who had their case reviewed, won their appeal and were issued a Seaport identification card. No female who appeared before the Appeals Committee was denied an identification card.

Of the 263 males who requested an appeal, 228 actually attended their appeal hearing. 35 males failed to attend, thereby forfeiting their right to further review by the Appeals Committee. 180 males were successful in having their initial denials reversed, resulting in the issuance of a Seaport identification card. 48 males had their initial denials sustained by the Appeals Committee.

## VII. FOCUSED ANALYSIS OF APPEALS BY RACE/ETHNICITY HEARD BY THE APPEALS COMMITTEE

In order to more fully analyze the Seaport's identification card appeals process, the OIG concentrated its analysis on those individual hearings where the applicants attended the appeals hearings. During the period of review, September 1998 to December 2001, a total of 237 appeals have been heard by the Appeals Committee. Therefore, the remainder of this report will focus solely on these 237 appeals cases.

## **A. ANALYSIS OF RACE/ETHNICITY DATA EXTRACTED FROM THE BADGING SYSTEM**

Initially, the OIG requested the Seaport Identification Card Unit to provide us with data on each of the 237 appellants. It was requested that the data be retrieved from the Seaport's "badging" system. The badging system is used to input and store all personal data on an applicant at the time he/she applies for a Seaport identification card. Because of staffing limitations, the Miami-Dade Police Department and the Seaport Information Technology Department allowed the OIG access into the badging system in order to retrieve the requested data. An OIG auditor was given "read only" access to the badging system, as well as the capability to print data off the system. Information retrieved from the Seaport badging system is incorporated in this report, and is used for comparative purposes against the information garnered from the actual files themselves.

As part of this study, the OIG attempted to identify by race and/or ethnic group identification the 237 appellants whose cases were actually heard by the Appeals Committee. Race and/or ethnic group identification as indicated on the individual's original application was compared to data retrieved from the badging system. The OIG found that the Seaport Identification Card Unit misclassified 40 out of 237 appellants regarding their race/ethnic group identification when compared against information supplied by the applicant himself/herself.

In the 189 appeal cases in which the initial denial was overturned (i.e. ID card issued), 30 appellants were misclassified as to race/ethnic group identification. (Exhibit F) 19 of the appellants identified themselves as Hispanic on their original Seaport identification card application; however, they were classified as W (white) in the badging system by the Identification Card Unit. Five (5) of the appellants who had their initial denials overturned by the Committee identified themselves as African American<sup>8</sup> or Black on their original Seaport identification card application; however, these individuals were incorrectly classified in the badging system as W (white) by the Seaport Identification Card Unit. (See Exhibit G for two examples).

Of the 48 sustained denial appellants (i.e. ID card denied), ten (10) were miscoded into the badging system. (Exhibit H) Among these ten (10) instances, there were seven (7) instances where the appellant classified him/herself as Hispanic on the application, but were coded into the badging system as W (white); two (2) instances where the original application was left blank regarding race/ethnicity, and yet coded into the system as W (white); and one (1) instance where the application appellant identified him/herself as African American, yet was identified in the badging system as M<sup>9</sup> for race/ethnic group identification.

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<sup>8</sup> For uniformity, the OIG uses the term "African American" for data garnered from the applicants' identification card request forms.

The OIG auditor observed that the badging system does not contain a drop down window with pre-determined categories for the category of race. Therefore, the Seaport Identification Unit staff simply types in the appropriate letter as indicated on the Seaport identification card request, for example “W” for White, “B” for Black and/or African-American and “A”<sup>10</sup> for Asian. Yet in each instance reviewed by the OIG, none of the 237 individual profiles downloaded from the badging system were classified as Hispanic, even though the corresponding files demonstrate that the 32 applicants referred to themselves as either H (Hispanic), W/H (White/Hispanic), S (Spanish), SPA or ESP. Four examples are attached (Exhibit I), which clearly show that the applicant indicated his/her race/ethnic identity as Hispanic on the Seaport Identification Card Request, yet when compared to the personal details form generated by the badging system, these individuals are classified as (W) White.

The OIG inquired of the Seaport Identification Unit staff why the it does not enter “H” into the badging system<sup>11</sup> as an identified race/ethnic group classification. It was explained that according to the training received by the Miami-Dade Police Department for background check purposes, the database only recognizes racial identity as either Black or White. When the example of the Asian applicant was brought their attention, the Unit’s staff member did not have an explanation.

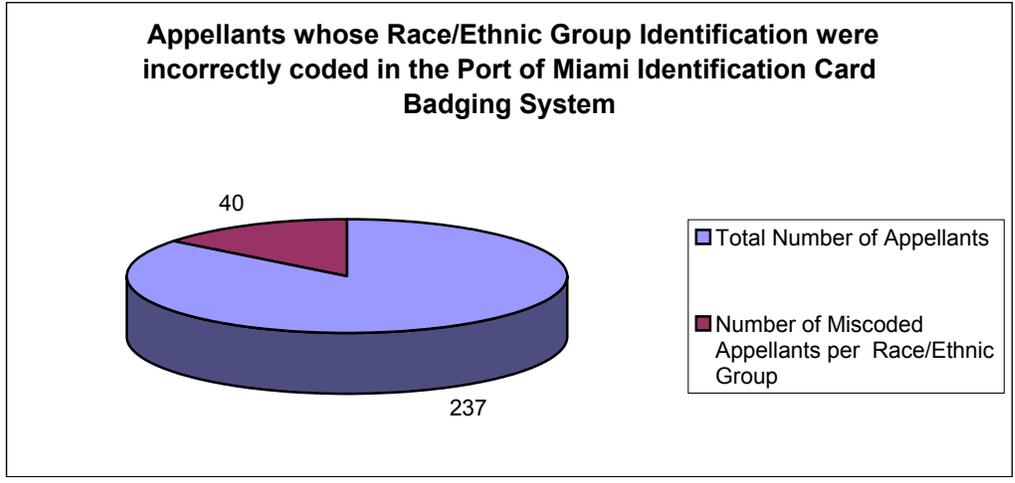
A breakdown of incorrectly coded appellants by race/ethnic identification appears in the next chart:

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<sup>9</sup> It is the OIG’s observation that the letter “M” for race was entered into the system incorrectly, and was likely a typographical/data entry error.

<sup>10</sup> A review of data retrieved from the badging system reveals that one appellant was identified as Asian. The OIG auditor retrieved this individual’s Seaport identification request card, which revealed that this appellant at the time of initial application did identify himself as Asian, and; therefore, was correctly identified as to race/ethnic identification in the badging system.

<sup>11</sup> As previously noted, the OIG only conducted 237 comparisons between information entered into the badging system to the applicant’s file. The OIG did not review the over 30,000 ID cards issued to determine the full extent of race/ethnic group misclassification and whether the badging system in general excludes the use of the term “Hispanic.”



**B. ANALYSIS OF RACE/ETHNICITY AND GENDER DATA EXTRACTED FROM APPEAL FILES**

In order to accurately analyze both approved (189) and denied (48) appeal cases, the OIG relied on data obtained from the appellants’ original applications retrieved from the appeal files. As previously mentioned, 40 out of 237 of the appellants were incorrectly identified in the badging system. Because of this misapplication rate of approximately 17%, the OIG deemed the appellant’s initial application for a Seaport identification card to be a more reliable source of data. The following analysis of applicants by race/ethnicity is, therefore, based on the information supplied by each individual on his/her application.

**1. REVERSED ON APPEAL – ID CARD ISSUED**

The OIG sorted the data to determine the race/ethnic group identification, as well as gender, indicated by the applicant on his/her application.

A breakdown of reversed appeals by race/ethnic<sup>12</sup> group identification and gender reveals the following:

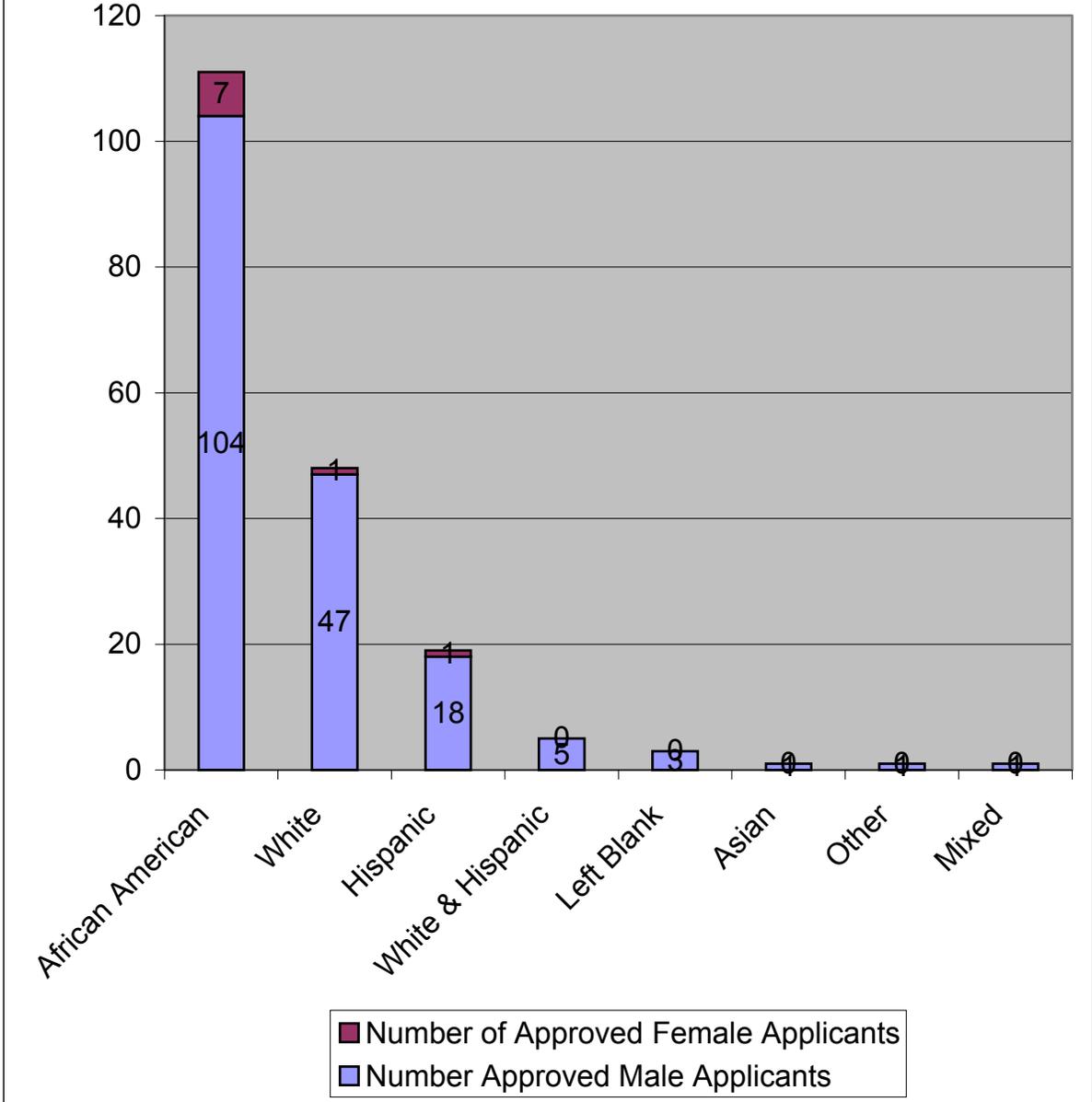
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<sup>12</sup> Applicants who indicated W/H as their race/ethnic group identification were not included in the Hispanic category for this subsection. (See the following two charts). However, any individuals who identified themselves as “Spanish,” “SPA,” “S” and “ESP” were included in the Hispanic category. Individuals who identified themselves as “Black” or “B” were included in the African American group.

Race or Ethnic Group	Number of Approved Male Applicants	Number of Approved Female Applicants
African American	104	7
White	47	1
Hispanic	18	1
White & Hispanic	5	0
Left Blank	3	0
Asian	1	0
Other	1	0
Mixed	1	0
Total	180	9

The largest racial/ethnic groups of approved appellants were African Americans, followed by those individuals who identified themselves as White. Those individuals identifying themselves as Hispanic when combined with the five (5) appellants who identified themselves as White/Hispanic comprise a group of twenty-four (24) appellants. The following chart provides a visual aide to assist in understanding the racial/ethnic groups whose initial denials for Seaport identification cards were reversed by the Appeals Committee.

### Approved Appeals Cases By Race/Ethnic Group Identification



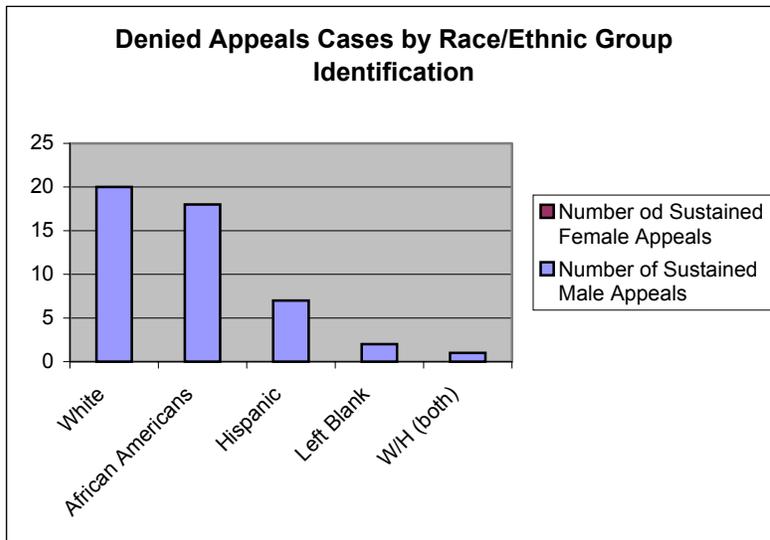
## 2. SUSTAINED ON APPEAL – ID CARD DENIED

The OIG sorted the data to determine the race/ethnic group identification, as well as gender, indicated by the applicant on his/her application. A breakdown of sustained appeals by race/ethnic group identification and gender reveals the following:

Race or Ethnic Group	Number of Sustained Male Appeals	Number of Sustained Female Appeals
White	20	0
African American	18	0
Hispanic	7	0
Left Blank	2	0
W/H (both)	1	0
<b>Total</b>	<b>48</b>	<b>0</b>

No female appellants had their denials sustained by the Appeals Committee. The Appeals Committee sustained initial denials for twenty (20) White male appellants, followed by eighteen (18) African American males, seven (7) Hispanic males, two (2) males who failed to indicate a race or ethnic group on his application and one (1) males who identified himself as White/Hispanic.

A breakdown of sustained denials appears in the chart below:



A conviction<sup>13</sup> of felony grand theft, in either the 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> degree, appears to be a consistent factor in the Appeals Committee decision-making process. A review of appellant files reveals that thirteen (13) of the twenty (20) white males who had their initial denials sustained by the Appeals Committee were convicted of grand theft. Six (6) of the eighteen (18) African American males who had their initial denials sustained by the Appeals Committee were convicted of grand theft, and all seven (7) Hispanic males who were denied a Seaport identification card had been convicted of grand theft.

### **C. MISCLASSIFICATION OF RACE/ETHNICITY DATA SKEWS DENIAL PERCENTAGES**

If one were to look at the percentage of appellants, by race/ethnicity, denied identification cards on appeal, the percentage would be dramatically different based on whether the data is obtained from the Seaport Identification Unit's badging system or from the applications themselves.

A breakdown of denials on appeal, by race/ethnicity, using data from the badging system reveals that of all appellants sustained on appeal/ID card denied:

- 62% are White
- 35% are African American
- 2% are "M" (see footnote 9)

The same breakdown of denials on appeal, by race/ethnicity, but with data from the applications on file reveals that of all appellants sustained on appeal/ID card denied:

- 42% are White
- 37% are African American
- 17% are Hispanic<sup>14</sup>
- 2% are unknown (as they left that portion of the application blank)

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<sup>13</sup> The term "conviction" includes having a finding of guilt ordered against the individual.

<sup>14</sup> One of eight (8) individuals referred to themselves as "W/H."

**VIII. FOCUSED ANALYSIS OF DENIALS BY GROUPS: EMPLOYER & JOB DESCRIPTION/CATEGORY**

**A. TOP TEN APPELLANT EMPLOYERS**

In order to determine if any job-identifiable group had been adversely affected by the appeals process, the OIG ranked the top ten employers with the largest number of applicants who were initially denied a Seaport identification card, and choose to file an appeal.

The employer with the largest number of appellants was the International Longshoremen’s Association (ILA) Local No. 1416 with a total of 109 appellants. Miami-Dade County, as employer, was second with a total of six (6) employees who appealed. In third place were two employers with five (5) appellants each: Royal Caribbean Cruise Lines and Mc Roberts Protective Agency.

<b>Ranking</b>	<b>Employer</b>	<b>Number of Employees who Appealed</b>
<b>1</b>	<b>ILA 1416</b>	<b>109</b>
<b>2</b>	<b>Miami Dade County</b>	<b>6</b>
<b>3</b>	<b>Royal Caribbean Cruise Lines</b>	<b>5</b>
<b>4</b>	<b>McRoberts Protective Agency</b>	<b>5</b>
<b>5</b>	<b>Seaboard Marine, Inc.</b>	<b>4</b>
<b>6</b>	<b>Caribbean Trucking, Inc.</b>	<b>3</b>
<b>7</b>	<b>Gimrock Construction</b>	<b>3</b>
<b>8</b>	<b>H &amp; M International Transportation,</b>	<b>3</b>
<b>9</b>	<b>Horizon Freight Systems, Inc.</b>	<b>3</b>
<b>10</b>	<b>ILA 1922</b>	<b>3</b>

Due to the tremendous drop between the number one employer with 109 employees filing appeals, and the second largest employer with six (6) appeals, the OIG looked for similarities between appellants to determine if there were any group(s) of appellants who share similar characteristics, but who did not work for the same employer.

The OIG obtained a listing of all trucking companies holding permits to operate on the Port of Miami. When sorting employer names obtained from appeal files and comparing those names to the listing of trucking companies authorized to operate on the Port of Miami, it was determined that truck drivers, when grouped together, created the second largest homogeneous group, after longshoremen, of employees filing appeals. The OIG determined that truck drivers are the only group that share similar characteristics, and do not work for the same employer.

The following chart lists a total of eight (8) employers<sup>15</sup> with a total of at least three employees who appealed their initial denials. Truckers are grouped together and as a group comprise a total of seventy-seven (77) individuals who filed written appeals. A total of nineteen (19) employers had at least two employees, who filed written appeals.

1	ILA 1416	109
2	Truckers	77
3	Miami Dade County	6
4	Royal Caribbean Cruise Lines	5
5	McRoberts Protective Agency	5
6	Seaboard Marine, Inc.	4
7	Gimrock Construction	3
8	ILA 1922	3

Due to the large drop in the numbers of appellants, the OIG focused on the two largest groups: longshoremen (Local 1416 only<sup>16</sup>) and truckers. (For a complete listing of all employers and the number of employees who requested an appeal see Exhibit J).

## **B. ANALYSIS OF ILA 1416 APPELLANTS**

109 members of the ILA 1416 filed appeals during our review period. Of the 109 appellants, there were 88 reversals, resulting in identification cards being issued, 16 sustained appeals and five (5) “no shows.” The gender and racial/ethnic breakdown among ILA 1416 appellants is: 101 African American males, five (5) African American females, one White male, one male who identified himself as “other” and one male who left that line on the application blank.

Of the 88 reversals (successful appellants), resulting in a Seaport identification being issued, 80 were African American males, five (5) were African American women, and the three males identified in the preceding paragraph as White, other and left blank.

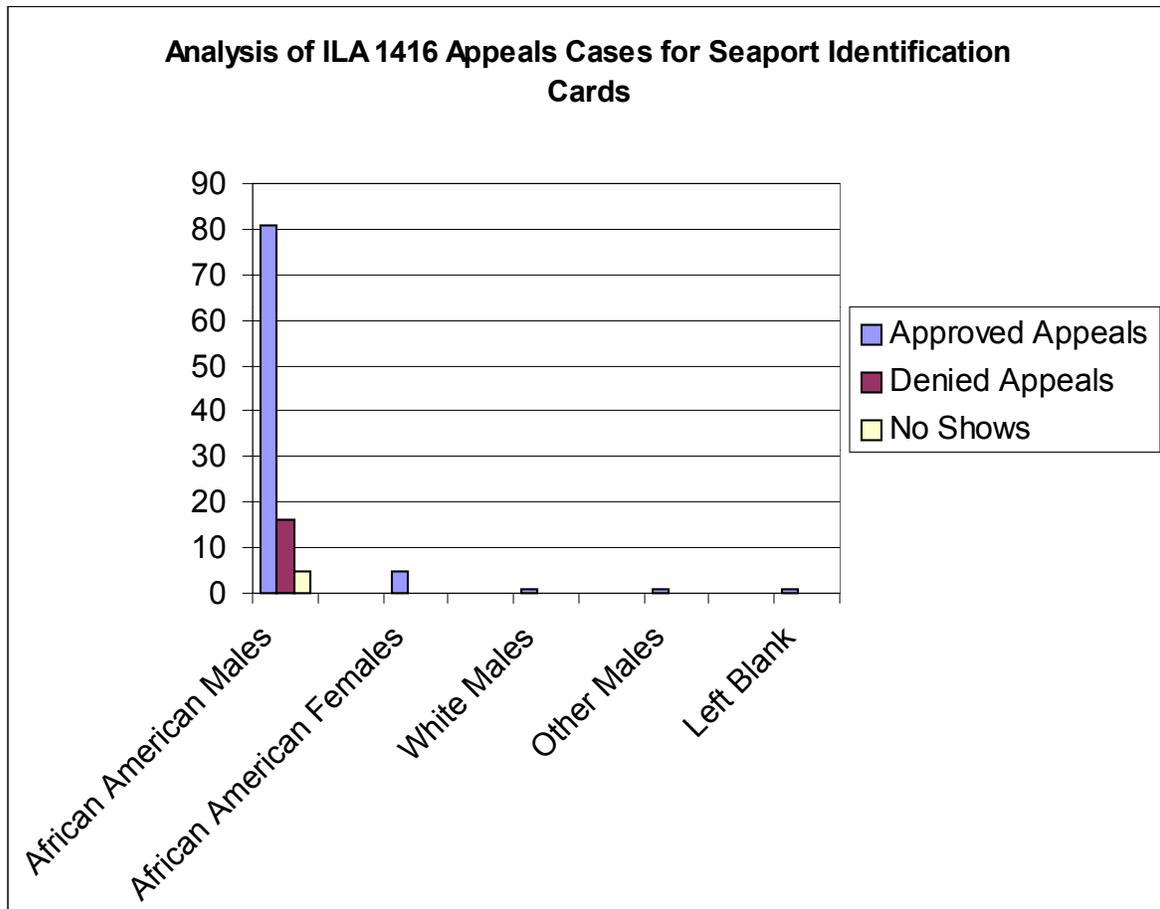
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<sup>15</sup> Seven of the eight listed employers are found on the previous “top ten” table. Three employers, Caribbean Trucking, H&M International Transportation, and Horizon Freight Systems, were removed from the list and combined into the “Truckers” category along with all other trucking firms who had employees appeal their initial denials of a Seaport identification card.

<sup>16</sup> ILA 1416 and ILA 1922 were not combined into one category of longshoremen. A review of the actual job functions reveals that the type of work performed is not similar enough to each other. Members of ILA 1416 are engaged in the loading and unloading of the vessels. Members of ILA 1922 are referred to as “checkers” and their function is to check the cargo prior to loading and unloading.

Of the 16 sustained appeals (unsuccessful appellants), all the appellants were African American males. Of the five (5) “no shows,” all were African American males. Among ILA 1416 member appellants, who actually had their case heard by the Appeals Committee, there was an 85% success rate of having the initial denial reversed on appeal.

The chart below provides for a visual analysis for ILA 1416 appeals cases.



A review of all ILA 1416 appeal case files revealed that many of these appellants have felony convictions of more than one offense, thus the statistics mentioned in the following paragraphs should be viewed collectively for the entire group. The OIG attempted to ascertain if a particular type of felony conviction would cause the Appeals Committee to sustain an initial denial. The four most common felonies consistently observed in the ILA 1416 member appeal files were convictions for narcotics, grand theft, assault and/or battery and firearms-related offense, which include carrying a concealed firearm, felony possession of a firearm, and firearm used to commit a felony. For each of these four categories, the OIG found:

- 47 of the ILA 1416 appellants had been convicted of a felony narcotics offense. Fourteen (14) of these 47 individuals had their initial denials sustained by the Appeals Committee.
- 24 of the ILA 1416 appellants had been convicted of grand theft. Appeal files reveal that five (5) of the 24 individuals had their initial denials sustained by the Appeals Committee.
- 23 of the ILA 1416 appellants had convictions for either assault and/or battery.<sup>17</sup> Three (3) of 23 individuals had their initial denials sustained by the Appeals Committee.
- 16 of the ILA 1416 appellants had been convicted of a firearms related offense (carrying a concealed firearm, felony possession of a firearm and firearm used to commit a felony). Two (2) these 16 individuals had their initial denials sustained by the Appeals Committee.

As previously mentioned, some appellants had more than one felony conviction and are counted more than once for this particular section. Therefore, the total number of sustained denials mentioned herein exceeds the number that appears on the previous page.

### **C. ANALYSIS OF TRUCK DRIVER APPELLANTS**

77 truck drivers filed appeals during our period of review. None of the truckers who filed appeals were females, leaving all 77 appellants as males. 43 were successful in their appeal and were issued Seaport identification cards; 21 were unsuccessful and their initial denial was sustained, and 13 individuals were “no shows.”

Of the 77 truck driver appellants there were: 46 White males, 21 Hispanic<sup>18</sup> males, (6) African American males and four (4) who failed to identify a race/ethnicity on their application form.

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<sup>17</sup> Our review indicated that in this category of offenses (assault and battery), individuals were initially denied identification cards where the criminal history check revealed an arrest/charges/court disposition for felony aggravated assault or felony aggravated battery. In the majority of the cases reviewed, it was later proven that the individual was ultimately convicted of the lesser crime of misdemeanor assault or misdemeanor battery.

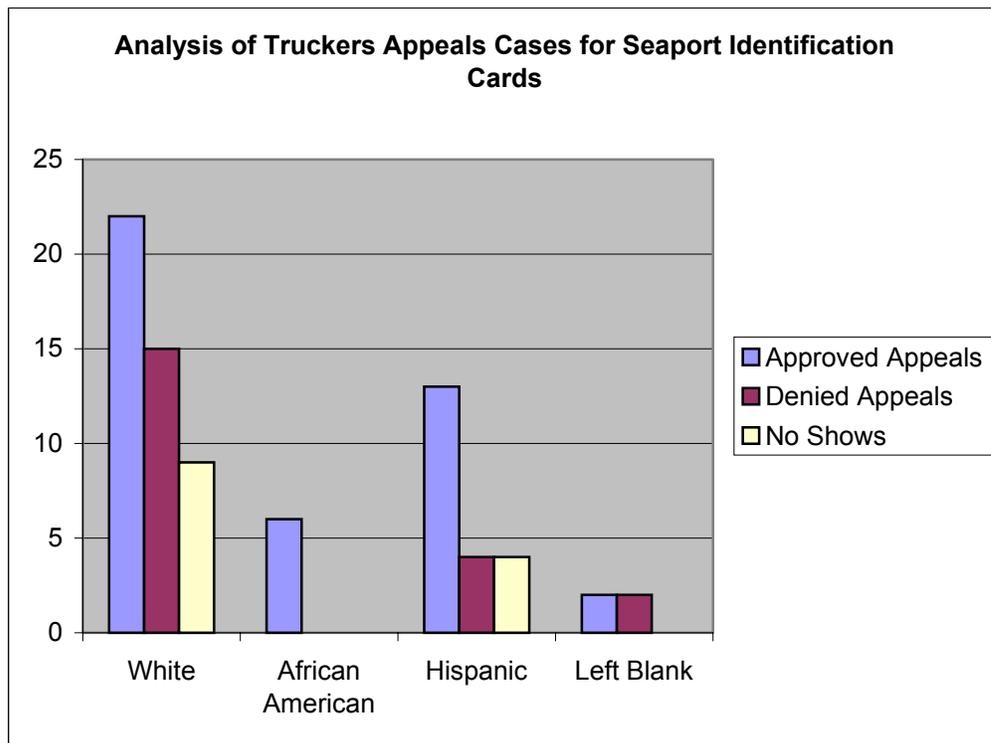
<sup>18</sup> The total of 21 includes 16 individuals who marked themselves as “Hispanic” and five (5) individuals who marked themselves as White/Hispanic [W/H].

Of the 43 successful truck driver appellants there were: 22 White males, 13 Hispanic<sup>19</sup> males, six (6) African American males, and two (2) appellants who failed to identify a race/ethnicity on their application form.

Of the 21 unsuccessful truck driver appellants there were: 15 White males, four (4) Hispanic<sup>20</sup> males, and two (2) appellants who failed to identify a race/ethnicity on their application form. No African American males were unsuccessful on appeal from this category of truck drivers.

There were thirteen (13) truck driver appellants who failed to appear before the Appeals Committee. Nine (9) were White males; four (4) were Hispanic males.

Among this category of appellants, who actually had their case heard by the Appeals Committee, there was a 67% success rate of having the initial denial reversed on appeal. The chart below provides for a visual analysis of truck driver appeals cases.



<sup>19</sup> The total of thirteen (13) includes nine (9) individuals who marked themselves as “Hispanic” and four (4) individuals who marked themselves as White/Hispanic [W/H].

<sup>20</sup> The total of four (4) Hispanic males includes three (3) individuals who marked themselves as “Hispanic” and one (1) individual who marked himself as White/Hispanic [W/H].

Upon closer review, the OIG noticed a pattern of Hispanic last names for those truck drivers whose initial denials were sustained by the Appeals Committee, (i.e. unsuccessful on appeal). These individuals identified themselves on their application solely as “White.” However, the OIG reviewed these individuals’ initial applications and discovered that eleven (11) of the fifteen (15) white males who had their initial denials sustained by the Appeals Committee were actually born in Latin countries. Ten (10) of the truck drivers were born in Cuba, and one (1) was born in Panama. If these eleven (11) individuals were moved to the Hispanic column on the above chart, sustained denials of white males then drops from 15 to four (4) individuals; conversely, sustained denials of Hispanic males increases from four (4) to 15 individuals.

A review of all truck driver appeal case files reveal that many of these appellants have felony convictions of more than one offense. Again, the OIG attempted to determine if a particular type of felony conviction would cause the Appeals Committee to sustain an initial denial. Among truck driver appellants there were four prevalent categories of felonies. These four categories are: grand theft/dealing in stolen property, burglary, narcotics and firearms-related offenses, such as carrying a concealed firearm, felony possession of a firearm, firearm used to commit a felony and assault with a deadly weapon/firearm.

For each of the four categories, the OIG found:

- 34 of the truck driver appellants had been convicted of either grand theft and/or dealing in stolen property. In many instances the appellant was charged with both offenses. 18 of these 34 individuals had their initial denials sustained by the Appeals Committee.
- Nine (9) of the truck driver appellants had been convicted of burglary. Four (4) of these nine (9) individuals had their initial denials sustained by the Appeals Committee.
- Nine (9) of the trucker driver appellants had been convicted of a felony narcotics related offense. Three (3) of these nine (9) individuals had their initial denials sustained by the Appeals Committee.
- Seven (7) of the truck driver appellants had been convicted of a weapons or firearm related offense. None of these seven (7) individuals had their initial denials sustained by the Appeals Committee.

As previously mentioned, some appellants had more than one felony conviction and are counted more than once for this particular section. Therefore, the total number of sustained denials mentioned herein exceeds the number that appears on the previous page.

## D. COMPARISON BETWEEN ILA 1416 AND TRUCKER APPELLANTS

As described above, the two largest groups of appellants are the 109 members of the ILA 1416 and the 77 truck drivers, who, when combined, form the second largest group of Seaport identification card appellants.

A comparison of the two largest groups reveals that 15% of all ILA 1416 members who appeared before the Appeals Committee were denied Seaport identification cards versus 33% of all truck drivers who appeared before the Appeals Committee were denied Seaport identification cards. Conversely, the success rate on appeal was 85% for the ILA 1416 and 67% for truck drivers.

The two groups are distinctly unique as to membership. 106 of the 109 ILA 1416 appellants identified themselves as African Americans. The truck drivers are a more diverse group with the following appellants filing appeals: 46 Whites, 6 African Americans, 16 Hispanics, 5 White/Hispanics and 4 not identifying themselves as to race/ethnic group identification.

The types of felonies committed by members of each group are also unique. The most common category of offenses for ILA 1416 appellants was narcotics, with 43% (47 out of 109 appellants) of ILA 1416 appellants having such a conviction. For truck drivers appellants, the most common felony offenses were grand theft and/or dealing in stolen property, with 44% (34 out of 77 appellants) having this type of felony conviction on their record.

A comparison between the two groups reveal that the percentage of those individuals who had felony convictions for grand theft and/or dealing in stolen property had a greater probability of having their initial denial sustained by the Appeals Committee. 18 of 34 truck drivers (53%) who had a conviction for grand theft and/or dealing in stolen property had their denials sustained by the Appeals Committee.

Conversely, a conviction for narcotics-related offense had a much lower probability of causing the Appeals Committee to sustain an appeal. As previously mentioned, 14 of 47 ILA 1416 members who had convictions for narcotics related offenses had their initial denials sustained by the Appeals Committee representing 30%. The same holds true for truck drivers as only three (3) of the nine (9) truck drivers or 33% who had convictions for narcotics-related offenses had their denials sustained.

Of particular interest was the high success rate for having a denial reversed when the conviction was a firearm-related offense. As previously mentioned, seven (7) truck drivers had criminal records for firearms-related offenses, and all were approved by the Appeals Committee to work on the Port of Miami. Among ILA 1416 appellants there were 16 members who had been convicted of firearms-related offenses. 14 of the 16 had their case reversed on appeal and were allowed to work on the Port of Miami. Among

the ILA 1416 appellants, the overwhelming majority of the firearms convictions were possessory offenses: 11 were for carrying a concealed firearm (CCF) and four (4) for firearm possession by a felon. Conversely, among truck driver appellants 50%<sup>21</sup> were possessory offenses: two (2) convictions for CCF and two (2) convictions for firearm possession by a felon.

## **IX. ATTENDANCE OF COMMITTEE MEMBERS**

Voting roles for committee members were reviewed to assess the consistency with which members voted on the appeals cases presented to the Committee. An obvious trend noticed by the OIG was the consistent absences of various committee members.

Based upon OIG observation of subsequent appeals hearings, which were not included in the scope of this review, on some occasions Appeal Committee members may arrive late to the hearing, thereby missing some of the first cases heard on that day. Additionally, a Committee member may completely fail to attend the session. The OIG's review of appeals materials did reveal a sign in sheet (signed by the Appeals Committee members), which showed which representatives were present. However, for some months, the OIG could not locate the sign in sheet, and the sheet by itself does not reveal if a Committee member arrived late. Therefore, the following analysis is based on the number of times a member did not vote, as opposed to the number of meetings that were missed.

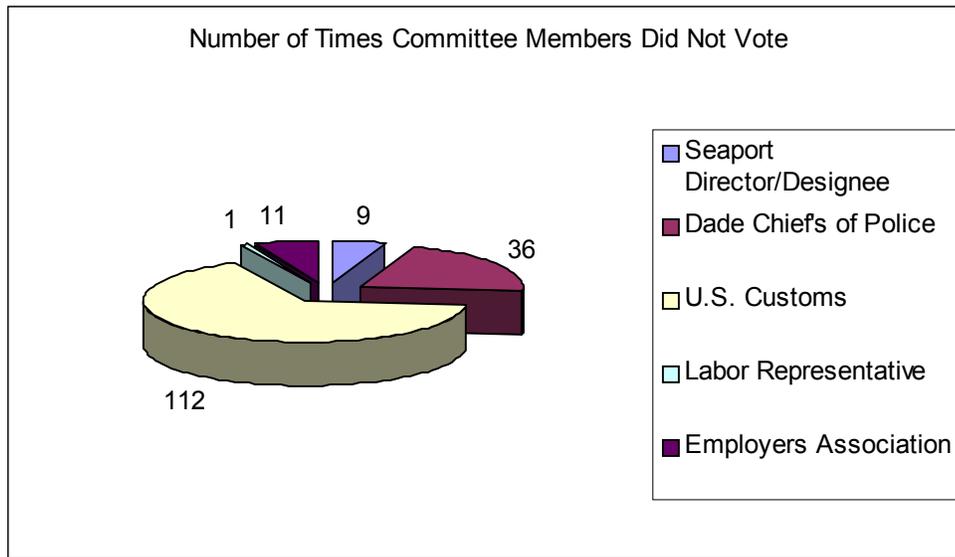
An examination of all the appealed cases (237 total) revealed that the U.S. Customs designee did not vote 112 times; the Dade Chiefs' of Police member did not vote 36 times; the individual representing the employee's employer did not vote on 11 occasions; the Seaport Director's designee failed to cast a vote 9 times; and the Labor representative<sup>22</sup> only missed one out of 237 votes.

The next chart provides a visual assessment of committee members voting histories.

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<sup>21</sup> For purposes of counting the number of conviction, one individual was convicted of both CCF and firearm possession by a felon.

<sup>22</sup> It was observed by the OIG, at subsequent appeal hearings not included in the scope of this review, that both ILA 1416 and ILA 1922 had a representative present. Depending on whether the appellant was a member of Local 1416 or Local 1922 determined which labor representative would cast a vote. For applicants that were not longshoremen, for example truck drivers, either labor representative would cast a vote.



It is important for all Appeals Committee members to attend and participate in the appeals hearings. The committee is comprised of members from different sectors of the Port community, each representing a different interest related to the well being of the Port. If a member is not voting or is not present at a hearing, the objectivity of the committee, as well as checks and balances within the Appeals process, becomes unbalanced.

The appellant should be afforded with the maximum opportunity to explain the circumstances, which caused him/her to have a felony record. The more committee members there are in attendance, the greater the opportunity is for the appellant to present his/her case. Finally, because each member brings a different perspective to the well being and security of the Port, it is desired that the full panel of the Appeals Committee be present in order for individual members to question the appellant and raise issues unique to the particular committee member's area of concern.

**X. COMPARISON TO NEIGHBORING PORT**

As part of this study, the OIG visited Port Everglades in Broward County to determine the procedures used by another seaport in the State of Florida. Port Everglades issues three types of identification cards: restricted area/green card, non-restricted area/red card and a temporary worker/blue card. Our discussion with Port Everglades' staff members focused on the application and appeal procedures for access to its restricted area/green card.

Similar to the Port of Miami's Identification Card Unit, Port Everglades' Identification Office (ID Office) is operated by the Broward County Sheriff's Office (BSO). The ID Office is staffed with both law enforcement sworn and civilian BSO employees. Port Everglades requires all applicants for a port identification card to complete an application. (Exhibit K) An applicant is required to complete all spaces on the Broward County Port Everglades Department Application. All data is maintained on a MS Access database, and can be extracted or sorted upon demand. Port Everglades' ID Office staff is instructed to enter all information into the database exactly as the applicant has written on the application.

An ID Office staff member (BSO employee) immediately checks both the Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) databases for an applicant's criminal history before issuing an identification card. This procedure is performed on-site within the ID Office. If there are no findings or "hits" on the applicant, the identification card is issued the same day. Additionally, fingerprints are taken of all new applicants, and results of fingerprint checks are generally available the next day. Finally, the applicant must provide proof of work eligibility. The ID Office staff expressed to the OIG that they have received training from the Immigration and Naturalization Service to detect fake work-eligibility documents.

If an applicant for a Port Everglades restricted area identification card has a felony conviction enumerated in either the Broward County municipal code or F.S. § 311.12, the applicant is immediately informed that he/she has failed to pass the criminal history background check. The individual is informed that he/she must return to the ID Office with a court disposition explaining the conviction and compliance with any probation or special conditions placed upon the applicant. Upon submission of the required documentation, the application along with the court disposition and a letter from the BSO, which explains that the individual failed the criminal history background check, is forwarded to the Port Security Administrator. (Exhibit L) It was explained to the OIG that if the submitted documentation positively demonstrates that the applicant is not prohibited from receiving an identification card, then the application may be approved and the card issued.<sup>23</sup>

However, if the documentation does not demonstrate that the applicant is eligible, then a letter is sent, via certified mail, to the applicant informing him/her that Port Everglades intends to deny<sup>24</sup> the pending application for a restricted access permit at Port Everglades. (Exhibit M) If the applicant requests a hearing, it is then scheduled before an independent mediator. The Port Everglades legal counsel attends all hearings and presents the Port's position.

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<sup>23</sup> For example, if an applicant's FCIC/NCIC criminal history check only shows an arrest for a felony offense, and the applicant submits proof, i.e. certified court documentation, that the charges were dismissed, the application may be approved.

<sup>24</sup> According to Port Everglades' procedures, a temporary identification card would not have been issued yet.

The Port Everglades ID Office verbally informed the OIG representative that, on average, Port Everglades initially denies about twenty (20) applications per month. In an average month, nine (9) hearings are scheduled before the independent mediator, and generally eight (8) denials of identification cards are upheld.

## **XI. OBSERVATIONS GARNERED FROM ATTENDING APPEAL HEARINGS**

An OIG representative attended the Port of Miami identification card appeals hearings on April 18, 2002, May 16, 2002 and June 20, 2002. The OIG representative's attendance at the appeals hearings was not part of this statistical study. However, observations were made which are relevant to the appeals process, and therefore, are included herein.

1. The Inspector General's representative observed that various committee members appeared confused about both Chapter 28A of the Code of Miami-Dade County and F.S. § 311.12. Committee members were heard asking whether they could get a copy of both statutory authorities.
2. There was no representative from the County Attorney's Office present. Instead, a Seaport Department Administrative Officer III was called upon numerous times to provide a verbal explanation of both Chapter 28A of the Code of Miami-Dade County and F.S. § 311.12.
3. The sole criterion consistently voiced by committee members was "Is this person a threat to the Port?" Lengthy discussions were observed concerning what the appellant could potentially do to harm the port community, but little if any of the discussions incorporated compliance with Chapter 28A or F.S. § 311.12.
4. Appellants appear confused and often do not understand the appeals process. Many are not aware that they could have brought character witnesses to speak on their behalf.
5. Both the ILA 1416 and the ILA 1922 send a representative to attend the hearings. For non-ILA appellants, either one or the other ILA representatives will vote on a given appeal. This creates non-consistent voting patterns, which potentially could disadvantage certain appellants and assist others.

## **XII. CONCLUSION**

Because this review was requested by the Seaport Director, the OIG has presented our findings in an expository format, which we believe will assist the Department in understanding its appeals process from both a procedural process and a statistical viewpoint.

No recommendations are being made, as the findings in this report are only a first step in fully evaluating the process, as to both the issuance of Seaport identification cards and the subsequent appeal of a denial thereof. Should the Seaport Department and any other interested parties wish to further study this matter and make recommendations, the OIG is willing to participate as a member of any such working group.

The OIG appreciates the cooperation and courtesies extended by all County personnel who assisted in our efforts to gather the necessary information in order to complete this review.